

The Hon. Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DANIEL RAMIREZ MEDINA,
Plaintiff,

V.

U.S. DEPARTMENT OF HOMELAND
SECURITY, *et al.*,
Defendants.

Case No. 2:17-cv-00218-RSM-JPD

**DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION FOR LEAVE TO
FILE THIRD AMENDED COMPLAINT
[DKT. NO. 140]**

INTRODUCTION

Plaintiff Daniel Ramirez Medina (“Plaintiff”) seeks leave of Court to file a third amended complaint (“TAC”) two years after originally commencing this action, nearly one year after the expiration of Plaintiff’s reinstated Deferred Action for Childhood Arrivals (“DACA”), which the Court enjoined Defendants from terminating, and four months after U.S. Citizenship and Immigration Services (“USCIS”) denied Plaintiff’s request for renewal of his DACA in its discretion.

Opposition to Motion for Leave to File
Third Amended Complaint
Case No. 2:17-cv-00218-RSM-JPD

U.S. Department of Justice, Civil Division
Office of Immigration Litigation
P.O. Box 868, Ben Franklin Station
Washington, D.C. 20044
(202) 616-1246

This Court should deny Plaintiff's motion. First, Plaintiff's claims regarding USCIS's April 2018 Notice of Intent to Terminate are moot. Second, Plaintiff's challenge to USCIS's December 2018 denial is a challenge to a new final agency action that should be raised in a new proceeding and permitting amendment unduly prejudices Defendants, and third, Plaintiff's claims regarding USCIS's December 2018 denial are ultimately futile because the Court lacks jurisdiction over those claims.

ARGUMENT

Leave to amend a complaint “shall be freely given when justice so requires.” Fed. R. Civ. P. 15(a). Although the rule should be interpreted with “extreme liberality,” *United States v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981), leave to amend is not granted automatically. *Jackson v. Bank of Hawaii*, 902 F.2d 1385, 1387 (9th Cir. 1990). A court should consider the following factors in determining whether to grant leave to amend: (1) undue delay; (2) bad faith; (3) futility of amendment; (4) prejudice to the opposing party; and (5) whether the plaintiff has previously amended his complaint. See *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 n.3 (9th Cir. 1987).

Futility of amendment alone justifies the denial of a motion for leave to amend or supplement. *See Bonin v. Calderon*, 59 F.3d 815, 845 (9th Cir. 1995). A proposed amendment is futile “if no set of facts can be proved under the amendment to the pleadings that would constitute a valid and sufficient claim or defense.” *Miller v. Rykoff-Sexton, Inc.*, 845 F.2d 209, 214 (9th Cir. 1988). If a proposed amended complaint cannot withstand a motion to dismiss, it should be denied as futile. *Eagle View Techs., Inc. v. Xactware Sols., Inc.*, No. C12-1913-RSM, 2013 WL 6086311, at *4 (W.D. Wash. Nov. 18, 2013) (Martinez, J.).

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1 **I. Plaintiff's Challenge to USCIS's April 2017 Notice of Intent to Terminate is Moot.¹**

2 “A case becomes moot—and therefore no longer a ‘Case’ or ‘Controversy’ for purposes
 3 of Article III—‘when the issues presented are no longer “live” or the parties lack a legally
 4 cognizable interest in the outcome.’” *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (citation
 5 omitted). A case becomes moot “only when it is impossible for a court to grant any effectual
 6 relief whatever to the prevailing party.” *See Knox v. SEIU, Local 1000*, 567 U.S. 298, 307–08
 7 (2012) (citation and internal quotation marks omitted). An exception to the mootness doctrine
 8 exists where a court retains jurisdiction over a challenged action because the defendant
 9 voluntarily ceased the allegedly illegal conduct, but this exception does not apply where “‘there
 10 is no reasonable expectation . . .’ that the alleged violation will recur” and “interim relief or
 11 events have completely and irrevocably eradicated the effects of the alleged violation.” *County of*
 12 *Los Angeles v. Davis*, 440 U.S. 625, 631 (1979) (alteration in original) (*quoting United States v.*
 13 *W.T. Grant Co.*, 345 U.S. 629, 632-33 (1953)).

14 Here, the Court can grant no further relief to Plaintiff with regard to USCIS’s April 2017
 15 Notice of Intent to Terminate. The reinstated period of DACA that Defendants previously sought
 16 to terminate expired on the same day that the Court entered its injunction. *See Preliminary*
 17 *Injunction Order*, Dkt. No. 132 at 23, n.7. Accordingly, there is no further action that USCIS can
 18 take with regard to its previously intended termination of Plaintiff’s DACA, and there is no basis
 19 for Plaintiff to assert additional claims with regard to USCIS’s April 2017 Notice of Intent to
 20 Terminate.

21 ¹ Defendants maintain that Defendants’ April 2017 Notice of Intent to Terminate was not a final
 22 action, and that the Court’s prior reliance on *Hata v. United States*, 23 F.3d 230, 233 (9th Cir.
 23 1994), *see* Dkt. 132 at 14, is in error. The court there did not address the finality requirement of
 24 the Administrative Procedure Act, and only held that a particular statutory provision that
 25 prohibited judicial review did not also prohibit allegations of serious constitutional violations.

1 **II. Plaintiffs are Required to File a New Action to Challenge a Separate Final Agency
2 Action, and Amendment would Prejudice Defendants.**

3 This Court should follow other courts applying Ninth Circuit precedent to find that,
4 where a new and separate final agency action will be based primarily on a new administrative
5 record, the new challenge is a “separate, distinct and new cause of action,” for which
6 supplementation of a complaint is not properly allowed under Rule 15(d). *Ctr. for Biological
7 Diversity v. Salazar*, No. CV 07-0038-PHX-MHM, 2010 WL 3924069, at *5 (D. Ariz. Sept. 30,
8 2010), citing *Western Watersheds Project v. United States Forrest Serv.*, Case No. CV-05-189
9 (D. Idaho), 2009 WL 3151121 at *2 (“It is clear that WWP takes issue with the supplemental
10 analyses [the court ordered the Forest Service to preform]. But WWP's claims of statutory
11 violations arising from the Forest Service's supplemental analyses are new claims appropriately
12 raised in a new cause of action.”); *Planned Parenthood v. Neely*, 130 F.3d 400, 402 (9th Cir.
13 1997).

14 Even if the Court disagrees that Rule 15(d) supplementation is the appropriate frame with
15 which to view Plaintiff's motion, allowing Plaintiff's proposed TAC to challenge to a new
16 administrative action prejudices Defendants for at least two reasons. First, Defendants must
17 prepare and file a new administrative record for the December 2018 adjudication, and will only
18 have 14 days to do so if the Court grants amendment. Second, potentially permitting Plaintiff to
19 challenge two agency actions at the same time in the same proceeding, on two separate
20 administrative records, would be confusing for both parties and the Court, and risks the Court
21 considering evidence when assessing agency action that was not before the agency at the time of
22 the decisions being challenged. Accordingly, this Court should deny Plaintiff's motion for leave
23 to file a TAC.

1 **III. A Third Amended Complaint is Futile because the Court Lacks Jurisdiction Over**
 2 **USCIS's December 2018 Denial of Plaintiff's DACA Renewal Request.**

3 It is futile for the Court to permit Plaintiff to file a TAC because the Court lacks
 4 jurisdiction over USCIS's December 2018 denial of Plaintiff's DACA renewal request. Although
 5 the Court previously found jurisdiction over Plaintiff's challenges to the process surrounding the
 6 termination of his DACA, both before and after Plaintiff was given advance notice and an
 7 opportunity to respond, Plaintiff now challenges a different adjudication by Defendants – the
 8 denial of Plaintiff's DACA renewal request. Here, Plaintiff appears to seek to challenge
 9 Defendants' ultimate discretionary decision with regard to his DACA renewal request.
 10 Accordingly, the Court lacks jurisdiction over this new challenge in accord with this Court's
 11 earlier recognition that “[S]ection 1252(g) would strip this Court of jurisdiction to review” “the
 12 government's ultimate discretionary decision to terminate his DACA status.” Dkt. No. 116 at 12
 13 (citations omitted). A finding that the Court lacks jurisdiction is also wholly consistent with the
 14 Ninth Circuit's decision in *Regents of the Univ. of California v. U.S. Dep't of Homeland Sec.*,
 15 908 F.3d 476, 504 (9th Cir. 2018) (finding that “individual ‘no deferred action’ decisions . . . fall
 16 exactly within Section 1252(g) as interpreted by the Court in *AADC*.”).

17 In this regard, Plaintiff does not allege specific procedural violations with regard to the
 18 December 2018 decision. Rather, he alleges that the December 2018 decision was based on
 19 “insufficient grounds provided, which also violated the terms of the Preliminary Injunction Order
 20 and contradict Defendants' own internal records.” Dkt. No. 140-1 at ¶ 93. Although Plaintiff
 21 alleges that USCIS's determination ran counter to the evidence before it, and that USCIS
 22 improperly determined that he was a “public safety concern” (although such language does not
 23 appear in USCIS's December 2018 decision), *id.* at ¶ 96, Plaintiff's challenge is nothing more
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than a challenge to how USCIS exercised its discretion. Although Plaintiff appears to allege a procedural violation with regard to the DACA Standard Operating Procedures' provisions with regard to USCIS's Background Check Unit, *see id.* at ¶ 100, Plaintiff's allegations are still insufficient to establish that the agency guidance in any way overrides the ultimate discretion of an adjudicator to deny a DACA renewal request. *See, e.g.*, DHS DACA FAQ, *available at* <https://www.uscis.gov/archive/frequently-asked-questions> (last visited April 8, 2019), at Q51: "USCIS retains the ultimate discretion to determine whether deferred action is appropriate in any given case even if the guidelines are met [when considering a renewal request]." Finally, Plaintiff's assertion that USCIS's denial of his renewal request is arbitrary and capricious because "99% of processed renewal requests are approved," also does nothing to undermine USCIS's discretionary authority recognized by the Ninth Circuit in *Regents*, as reflected in the 4,318 DACA renewal requests denied in FY2018, and 4,059 in FY 2017. *See* Deferred Action for Childhood Arrivals (DACA) Quarterly Report Fiscal Year 2019, 1st Quarter, *available at* https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/DACA_FY19_Q1_Data.pdf (last visited April 8, 2019). Accordingly, Plaintiff's challenges to USCIS's December 2018 denial of his DACA renewal request do not create a path to reviewability of USCIS's discretionary determination, the Court should deny Plaintiff's motion for leave to file a TAC as futile.

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CONCLUSION

For all the aforementioned reasons, the Court should deny Plaintiff's motion for leave to file a TAC.

DATED: April 8, 2019

Respectfully submitted,

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/s/ Jeffrey S. Robins
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1 **CERTIFICATE OF SERVICE**
2

3 I HEREBY CERTIFY that on April 8, 2019, I electronically filed the foregoing
4 document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document
5 should automatically be served this day on all counsel of record *via* transmission of Notices of
6 Electronic Filing generated by CM/ECF.
7

8 */s/ Jeffrey S. Robins*
9 Jeffrey S. Robins
10 Assistant Director
11 U.S. Department of Justice
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